



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/11871/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 April 2016
Prepared 15 April 2016**

**Decision & Reasons Promulgated
On 28 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

B R

(ANONYMITY DIRECTION CONTINUED)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Presenting Officer
For the Respondent: None; the Sponsor, Mr Saquib Mahmood, present

DECISION AND REASONS

1. The Respondent, a national of Pakistan, date of birth [] 1993, appealed against the decision of the Appellant, hereafter referred to as the ECO, whose decision was made on 27 August 2014 to refuse entry clearance as a partner under Appendix FM of the

Immigration Rules HC 395 (as amended) (the Rules), with reference particularly to paragraph EC-P.1.1. and Appendix FM-SE, because the Respondent's application sponsored by Mr Mahmood, her husband, had failed to provide evidence of his earnings covering either the period of six months at the date of application or, if not, over a more extended period which was not directly applicable.

2. The matter came before First-tier Tribunal Judge Andonian (the Judge), who, on 14 May 2015, allowed the appeal under the Immigration Rules and made a fee award in the sum of £70. The ECO sought permission to appeal the Judge's decision on 15 June 2015 and on 21 August 2015 was granted permission to appeal by First-tier Tribunal Judge Colyer.
3. For no apparent reason, except presumably case load, the appeal has since then taken a significant length of time to come forward, which is a matter of real regret because it was quite apparent, particularly if the Sponsor had obtained legal advice, the appeal was sure to fail because the relevant specified evidence covering the period required in advance of the date of application had not been provided. It is clear from Appendix FM-SE what those requirements were. Quite simply the Judge's exercise in seeking to avoid the requirements of the specified evidence was an error of law. The issue of whether the Sponsor could show the required income level over a year of £18,600 was not correctly addressed and reasoned by the Judge.
- . In the circumstances I was satisfied that the original Tribunal made a material error of law and that decision could not stand.
4. I explained at length to the Sponsor why the ECO's appeal succeeded, the need for the Sponsor and his wife to make a new application with the correct documentary evidence as well as the benefit of obtaining legal assistance to deal with the complexities of the Immigration Rules.

5. In the circumstances of the case therefore, there being no evidence to meet the requirements of Appendix FM-SE at the date of application, I was satisfied that the only outcome to the appeal was that the ECO's appeal must be allowed. It is appropriate for the anonymity order to be continued.

DECISION

The Original Tribunal's decision can not stand.

The following decision substituted. The appeal of [BR] against the ECO's decision dated 27 August 2014 is dismissed.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 24 April 2016

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

In the circumstances the fee award cannot stand, the appeal against the ECO's decision having failed.

Signed

Date 24 April 2016

Deputy Upper Tribunal Judge Davey